

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA08-876

ST. EDWARD MERCY MEDICAL
CENTER AND SISTERS OF MERCY
HEALTH SYSTEM

APPELLANTS

V.

CASSANDRA RICHARDS WILSON

APPELLEE

Opinion Delivered March 18, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F601643]

AFFIRMED

JOHN MAUZY PITTMAN, Judge

Appellee employee sustained a compensable lower back injury while employed as a nurse's assistant by appellant employer. The injury was accepted as compensable and appellee underwent a percutaneous disc decompression of two herniated discs on June 2, 2006. The procedure provided her with almost complete relief from her back pain for eight weeks. Then, on August 1, 2006, appellee experienced recurrent back pain after sliding a coffee table a short distance over a carpet while seated. Appellant denied further medical benefits. After a hearing, the Arkansas Workers' Compensation Commission granted the request for further medical treatment, finding that any complication arising from moving the coffee table was a natural and probable consequence of appellee's compensable injury. Appellant argues that the Commission erred in concluding that the need for further treatment was the natural consequence of the compensable injury. We affirm.

When the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for every natural consequence that flows from that injury. If, after the period of initial disability has subsided, the injury flares up without an intervening cause and creates a second disability, it is a mere recurrence, and the employer remains liable. *Atkins Nursing Home v. Gray*, 54 Ark. App. 125, 923 S.W.2d 897 (1996). A recurrence is not a new injury but simply another period of incapacitation resulting from a previous injury. *Id.*; see *Henson v. Club Products*, 22 Ark. App. 136, 736 S.W.2d 290 (1987).

The test for determining whether a subsequent episode is a new injury or an aggravation is whether the subsequent episode was a natural and probable result of the first injury or if it was precipitated by an independent intervening cause. *Georgia-Pacific Corp. v. Carter*, 62 Ark. App. 162, 969 S.W.2d 677 (1998). If there is a causal connection between the primary and the subsequent disability, there is no independent intervening cause unless the subsequent disability is triggered by activity on the part of the claimant that is unreasonable under the circumstances. *Id.*; *Guidry v. J & R Eads Construction Co.*, 11 Ark. App. 219, 669 S.W.2d 483 (1984).

In reviewing decisions from the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirm if they are supported by substantial evidence, *i.e.*, evidence that a reasonable person might accept as adequate to support a conclusion. *Cottage Café, Inc. v. Collette*, 94 Ark. App. 72, 226 S.W.3d 27 (2006). We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached

the conclusions arrived at by the Commission. *Wal-Mart Stores, Inc. v. Sands*, 80 Ark. App. 51, 91 S.W.3d 93 (2002). Questions of weight and credibility are within the sole province of the Commission, which is not required to believe the testimony of any witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Strickland v. Primex Technologies*, 82 Ark. App. 570, 120 S.W.3d 166 (2003). Once the Commission has made its decision on issues of credibility, the appellate court is bound by that decision. *Cottage Café, Inc. v. Collette*, *supra*.

The Commission here found that the coffee-table incident was not an independent intervening cause of appellee's need for treatment, but that the requested additional medical benefits were necessitated by, and were a natural and probable consequence of, appellee's initial compensable injury. In support of this finding, the Commission relied on evidence that the same area of appellee's back was involved in both her compensable injury and the need for additional treatment following the coffee-table incident, noting that medical opinions differed on the question of whether repeat MRIs taken after the incident showed any change from those taken previously, and that appellee remained in some pain during the time between the two events. It also noted that Dr. Swicegood had opined that appellee's compensable injury would make it more likely that degenerative changes in the injured area of her back would occur.

Appellant argues that the above-recited facts are not substantial evidence in light of evidence that Dr. Swicegood referred to the coffee-table incident as a "reinjury" and that appellee was pain-free after the initial surgery. We do not agree. Dr. Swicegood's description

of appellee's condition after moving the coffee table as a "reinjury" is a medical one, and does not require the legal conclusion that the subsequent event was an independent intervening cause. See *Duke v. Regis Hairstylists*, 55 Ark. App. 327, 935 S.W.2d 600 (1996). Nor does the contradicted evidence that appellee was free of pain during the time between the incidents mandate a conclusion that she had completely healed from her compensable injury and resultant disc decompression surgery in the few weeks separating the surgery and the coffee-table incident. Nor do we think that the Commission was required to find that it was unreasonable for appellee, while seated on a couch, to slide a coffee table weighing no more than twenty pounds for a short distance over a carpet. See *Lunsford v. Rich Mountain Electric Co-op*, 33 Ark. App. 66, 800 S.W.2d 732 (1990).

Affirmed.

GLADWIN and HENRY, JJ., agree.